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APPEAL STAFF REPORT

SUBSTANTIAL ISSUE DETERMINATION

Appeal numberA-3-MCO-03-121

ApplicantsLisa and Karl Kleissner

Appellant.....Dr. and Mrs. Robert Schapira

Local governmentMonterey County (PLN 020392)

Local decisionBoard of Supervisors Resolution 03-398, Approved with conditions (November 25, 2003), received December 12, 2003.

Project location35678 Highway 1 (southwest of Garrapata Creek Bridge), Big Sur Coast Planning Area, Monterey County.

Project descriptionConstruction of a new detached 1,380 square foot, 3-car garage, with a 420 square foot guesthouse and fencing along southern property line, and minor modification (new 140-foot long section) of an existing access road to reach the garage/guesthouse structure.

File documents.....Monterey County Certified Local Coastal Program; Big Sur Land Use Plan and Regulations for Development in Big Sur Planning Area; Monterey County Coastal Implementation Plan; Final Local Action Notice for local permit PLN020392.

Staff recommendation ...No Substantial Issue

Summary: The Monterey County Board of Supervisors approved a combined coastal development permit and design approval, allowing Karl and Lisa Kleissner to construct a new detached, one-story, 1,380 square foot 3-car garage with an attached, one-story, 420 square foot guesthouse, plus installation of a 5-foot tall wooden grape stake fence along the southern property line of their parcel located at 35678 Highway 1 in Big Sur (APN 243-231-013) in Monterey County. This approval allows development in the Rocky Point exception area of the Big Sur critical viewshed. The subject parcel has an existing single-family dwelling and access road that crosses two adjacent parcels to the north, which the Kleissner's also own. No additional development on these other two parcels is proposed by the current action.



California Coastal Commission
May 12, 2004 Meeting in San Rafael

Staff: K.Cuffe Approved by:

Appeal Contentions

The appellants, Dr. and Mrs. Robert Schapira, property owners and residents of the parcel immediately to the south of the Kleissner site, appealed the County's approval to the Commission, on the grounds that the project does not conform to LCP requirements for protection of scenic resources, environmentally sensitive habitat areas, and archaeological resources, and is inconsistent with guesthouse standards identified in the County's Coastal Implementation Plan. The appellants contentions are more fully described in Section 2 of this report.

Big Sur Critical Viewshed - Rocky Point Exception Area

The subject parcel is located between Highway One and the sea, within the Big Sur Critical viewshed, where the key scenic resource protection policy prohibits new development visible from Highway One. Critical viewshed policies require that enlargement of existing structures be designed so that they do not increase the visibility of the structure, require siting in the least visible portion of the site and require that ocean views from Highway 1 not be obscured by artificial berming/mounding or landscaping.

The parcel is also located within the Rocky Point exception area, where the LCP provides for exceptions to the key viewshed policy prohibiting development visible from Highway One. Policies governing development on vacant parcels in the Rocky Point exception area require guesthouses to be attached to the main dwelling except where siting elsewhere will better protect visual resources. Policies also recommend the use of roof and surface treatments; earthtone colors and materials to help visually blend structures with the surrounding environment; the use of berming and other measures designed to minimize views of structures without blocking ocean vistas seen from Highway One; and the dedication of scenic easements over the remaining undeveloped portion of the lot. These policies have been interpreted by the County to also apply to developed parcels in the Rocky Point exception area, provided that the portion of the parcel selected for additional development is the least visible from public viewpoints. This interpretation has been upheld in previous court cases.

The project, as approved by the County Board of Supervisors, includes locating the guesthouse and garage in an area that is already partially blocked by existing topography and landscaping, instead of closer to the existing house site, which is out near the end of the coastal bluff, where it would be fully exposed in the Critical Viewshed and so much more conspicuous. Thus the proposed detached guesthouse and garage is sited in the least visible portion of the site, and does serve to better protect visual resources. The project is also designed in a manner that will minimize visibility of the new structures by being dug into the ground and lowered in height so that the artificial berming and vegetation used to screen the development will not block ocean views from Highway 1. Therefore, with respect to the contentions raised by the appellant, the project does not raise a substantial issue with regards to protection of scenic resources and protection of the Big Sur Critical Viewshed.

The project will also use roof and surface treatments (wood and stone facia, redwood trim and vegetated/turf roof) to blend the visual appearance of these new structures with the surrounding environment. The project has also been designed to use berming along the east side of the garage and



along portions of the north, south and west sides of the garage, and additional landscaping atop the berming and roof, and along the north side of the garage/guesthouse to minimize visibility of the structure from public views such as those from Garrapata Beach and Highway One to the north and the Hwy One Bridge over Garrapata Creek east of the site. With these design elements incorporated into the project, staff believes that the project does not raise a substantial issue with regard to LCP's Big Sur Critical Viewshed Rocky Point exception policies.

Scenic Easement

A scenic easement, restricting use of the area from landscaping or development activity, was also required over the area of the rocky point seaward of the existing residence from the bluff edge to the ocean. This does not fully adhere to the LCP policy that encourages dedication of scenic easements over the undeveloped portion of the lot, but does serve to protect a portion of the parcel that is closest to the shoreline and so most visible within the critical viewshed. The remainder of the lot is very constrained by its shape, width, and exposure within the viewshed, so should be adequately protected by the strict application of existing viewshed policies which would not allow any more development on this site. Therefore, although a scenic easement over the entirety of the remainder of the property was not obtained, the project does not raise a substantial issue with regards to the provision of the easement.

Environmentally Sensitive Habitat Area

A previous biological report, prepared by the biological consultants, Jud Vandevere and Jeff Norman, for a project proposed by the previous property owner in 1997, stated that the subject parcel and an adjacent parcel to the north (APN 243-231-013 and -016) contained numerous dune buckwheat (*Eriogonum parvifolium*) plants, which is a known host plant for the endangered Smith's blue butterfly. Later correspondence from Jud Vandevere, in September 2002, and April 2003, indicated that the buckwheat and other native plants on the site had been replaced by exotic, invasives (*Carpobrotus edulis*, otherwise known as Hottentot fig, or more commonly as iceplant), which had overgrown the native plants. The current property owners purchased the property in February of 2000, and later removed much of the iceplant on the parcel, and then restored the area with a mix of coastal-adapted native plants that included, among other things, plantings of dune buckwheat. Most recently, Mr Vandevere submitted a letter to Commission staff, dated April 10, 2004, to clarify that "by 2000, a mattress formation of Hottentot fig, *Carpobrotus edulis*, had completely overwhelmed and eradicated 100% of the dune buckwheat identified in 1997 within the vicinity of the proposed garage and studio [guesthouse]." Therefore there were no buckwheat plants in the project area when the Kleissners conducted their restoration and revegetation of a portion of this and the adjacent parcel in September of 2000. Mr. Vandevere's letter also indicates that in the 2002 survey conducted on site, no buckwheat plants were identified in or outside of the proposed project area.

The County's record indicates, that Smith's blue butterfly habitat on the project site was lost due to invasion of the iceplant, but that it has since been restored on the adjacent property, which does not include any development under the current permit. In additional discussions following the appeal of the project to the Commission, Mr. Vandevere clarified that during restoration efforts undertaken by the



current property owners, dune buckwheat plants were replanted on the subject parcel north of the existing access road, but that no sensitive plant species occurred within the proposed building envelope (pers. comm. 4/8/04).

Along with their efforts to restore native vegetation to the site, the applicant has volunteered to grant a conservation easement to the County or a non-profit group to permanently protect “an appropriate portion of APN 243-231-013 equivalent to the net area of potential seacliff buckwheat (*Eriogonum parvifolium*) habitat impacted by the approved development, including but not limited to planting native species on the roof of the approved structure.” The County formalized this offer by requiring a deed restriction as a condition of approval. Therefore, since the project will not impact any sensitive plant or animal species, and has actually been designed to incorporate additional buckwheat plantings, grant of conservation easement, continued revegetation efforts, and invasive weed control efforts, the project does not raise a substantial issue with regards to ESHA protection policies of the LCP.

Archaeological Resource Protection

The project site is also located in a highly sensitive archaeological area, and preliminary archaeological reports found that the parcel contains portions of an archaeological site (shell midden). While preliminary results from a single unit excavation test conducted in May 2003 concluded that the site is not unique and may be of limited significance, the project was conditioned to require a technical report be completed prior to issuance of any permits and an archaeological easement be placed on all significant archaeological sites as determined by the Final Technical Report prepared for the project. Additionally, the project was conditioned so that if the Final Technical Report determined there are significant archaeological resources to be protected on site, the applicant shall request a rezoning of the parcel to add an “HR” (Historical or Archaeological Resource) zoning district to the existing zoning district, prepare and implement a mitigation plan that includes preservation measures, and obtain amendments to the permit if the mitigation plan would require material changes in the project as currently approved by the County.

Deed Restriction for Guesthouse Construction and Use

And finally, the appellants contend that the project approved by the Board of Supervisors is inconsistent with guesthouse standards identified in the County’s Coastal Implementation Plan. County standards identify the conditions and limited use restrictions allowed for guesthouses (e.g., permanent attached or detached structure with maximum of 425 square feet, shall contain no kitchen or cooking facilities, shall not be let or leased, etc.).

The Board of Supervisors’ action did require the applicants to record a deed restriction clearly stating the regulations of the Coastal Implementation Plan applicable to use and construction of the guesthouse, as required by Section 20.64.020 (which have been included in this report as Exhibit K). With these restrictions incorporated by deed restriction, the use and construction of the guesthouse will comply with the requirements of Section 20.64.020 as stated. Thus the appellants’ contention with respect to use and construction of a guesthouse on site does not raise a substantial issue.



Conclusion

Therefore, after review of the record, staff review has determined that the appeal contentions brought forth by the appellants do not rise to the level of a substantial issue requiring the Commission to take jurisdiction over the project. The applicants have proposed a modest project, generally consistent with the surrounding character of the Rocky Point – Big Sur Coast area, that has been sited and designed to minimize impacts to views within the Big Sur Critical Viewshed and Rocky Point Exception area. Staff thus recommends that the Commission find that no substantial issue exists with respect to this project's conformance with the certified Monterey County LCP and decline to take jurisdiction over the coastal development permit for the project.

Staff Report Contents

1. Local Government Action	5
<u>II. Recommended Motion and Resolution</u>	7
<u>III. Appeal Procedures</u>	7
2. Appellant's Contentions	8
3. Scenic Resource Issues.....	9
4. Environmentally Sensitive Habitat Issues.....	16
5. Archaeological Resource Protection Issues	21
6. Guesthouse Requirements	26
7. Other Appeal Contentions.....	28
8. Exhibits	
Exhibit A: Regional Location Map	
Exhibit B: Project Vicinity Map	
Exhibit C: Assessor's Parcel Map	
Exhibit D: Aerial Photos of Garrapata Creek area showing Kleissner parcel	
Exhibit E: Staff Photos of Proposed Project	
Exhibit F: Board of Supervisors Final Local Action Notice approving Kleissner project	
Exhibit G: Appeal of Dr. and Mrs. Robert Schapira	
Exhibit H: Site Plans and Elevations	
Exhibit I: Biological Reports and Correspondence	
Exhibit J: Archaeological Reports and Correspondence	
Exhibit K: Regulations for Guesthouse	
Exhibit L: Applicant's Response to Appeal Contentions.	

1. Local Government Action

Based on County records, the following is a timeline of the County's review and actions regarding the Kleissner project:



Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 6

- On February 11, 2003, the applicants filed an application for a combined development permit and design approval (PLN020392) to construct a detached 3-car garage with a guesthouse and re-locate the driveway at 35678 Highway One, near Garrapata Ridge Road, in Big Sur Coast Planning Area of Monterey County.
- On March 11, 2003, the Big Sur Land Use Advisory Committee voted 5-0 to recommend approval of the project.
- On July 18, 2003, an initial study and draft mitigated negative declaration was distributed, with comment period from July 21, 2003 to August 21, 2003.
- On August 28, 2003, the Zoning Administrator held a duly noticed public hearing and continued the project to schedule and conduct a site visit.
- On September 9, 2003, the Zoning Administrator held a duly noticed public hearing at the project site to review issues raised in the August 28 2003 hearing.
- On September 25, 2003, the Zoning Administrator held a duly noticed public hearing and continued the proposed project due to an appeal filed by neighboring property owners to address procedural issues (PLN030442).
- On September 30, 2003 the Zoning Administrator referred the project to the Planning Commission as the appropriate authority to hear the case.
- On October 8, 2003, the Planning Commission held a duly noticed public hearing on the project, and voted 9-0 to approve the project as presented by staff, approving Resolution 03065.
- On October 16, 2003 Dr. and Mrs. Robert Schapira filed an appeal of the Planning Commission's decision approving the project.
- On November 25, 2003 the Monterey County Board of Supervisors held a public hearing to consider the appeal of the Planning Commission's October 8, 2003 approval of the project, granted the appeal in part, and approved the project subject to multiple conditions (see Exhibit 1 for the County's staff report, findings and conditions on the project).
- Notice of the coastal development permit (CDP) was received in the Coastal Commission's Central Coast Office on December 12, 2003.
- On December 29, 2003, the Board of Supervisors' approval was appealed to the Coastal Commission by Dr. and Mrs. Robert Schapira on the basis that the project does not conform to LCP requirements for protection of scenic resources, environmentally sensitive habitat areas, and archaeological resources, and is inconsistent with guesthouse standards identified in the County's Coastal Implementation Plan.



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 7

For clarification, it should be noted that the Coastal Commission had filed an earlier appeal of the Planning Commission's decision on the last day of the County appeal period, however, because the Planning Commission's decision was also appealed to the Board of Supervisors by the Schapiras, the Planning Commission's decision was no longer the Final Local Action for the project, so the Commission's appeal was deemed null and void.

In response to concerns voiced by the Coastal Commission, the applicants volunteered to modify their proposed project, prior to the hearing by the Board of Supervisors, in the following manner:

- They lowered the finished elevation of the entire structure 1.5 feet from elevation 50 to elevation 48.5 (which would be dug into the ground); and
- Lower the ridgeline of the guesthouse an additional 18 inches.
- And by redesigning the framing over the utility room in the garage to drop an additional 18 inches on the west side of the building.

With these modifications, and other clarifications and conditions made in response to Coastal Commission concerns regarding consistency with scenic resource protection policies, standards for guesthouses, ESHA protection policies, scenic easement requirements, and archaeological resource protection, which were incorporated into the Board of Supervisor's final local action on the project in response to the Schapira's appeal, the Coastal Commission did not submit a new appeal following the Boards approval of the project.

II. Recommended Motion and Resolution

MOTION:

*I move that the Commission determine that Appeal No. A-3-MCO-03-121 raises **NO** substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

*Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.*

RESOLUTION TO FIND SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-3-MCO-03-121 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. Appeal Procedures



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 8

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is between the sea and the first public road, within 300 feet of the inland extent of the beach, and within 300 feet of the top of the seaward face of the coastal bluff.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that “no substantial issue” is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the first public road and the sea and thus, this additional finding would need to be made in a de novo review of this case.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

2. Appellant's Contentions

The Appellant contends that the project is not consistent with the LCP requirements for protection of scenic resources, environmentally sensitive habitat areas, and archaeological resources, and is inconsistent with guesthouse standards identified in the County's Coastal Implementation Plan.

The appellants contend that the project conflicts with numerous policies in the LCP, including, without limitation, policies relating to:

- Viewshed protection
- Development standards within critical viewshed exception areas



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 9

- Archaeological resource protection
- Biological resource protection
- Neighbor privacy and view policies
- Code violations requiring enforcement/remediation (for removal of vegetation)
- Not conditioned adequately with respect to scenic/conservation easements, deed restrictions and rezoning requirements
- CEQA review was inadequate
- Findings and decision not supported by evidence in the record
- Decision was contrary to law.

Please see Exhibit G for the Appellant's complete appeal document.

Please note that the appellants' appeal alleges inconsistencies with a large number of County policies. However, some of the references cited in the appeal are not LCP policies. As such, not all contentions referenced in the appellants appeal document are contained in the "applicable policies" sections of this staff report. The policies cited herein have been cited using the broadest possible construction of the Schapira's appeal so as to be as policy-inclusive as possible while not overly burdening the analysis with unnecessary detail. The complete Monterey County LCP is available for review at the Commission's Central Coast District office and is a substantive file document for these findings. In any case, the Schapira's LCP contentions are addressed in full in these findings.

3. Scenic Resource Issues

The Appellant contends that the proposed project does not conform to LCP policies regarding scenic resource policies, viewshed protection, and development standards within critical viewshed exception areas. The appellants incorporate their earlier letters (dated October 16, 2003 and November 24, 2003 regarding their appeal of the Planning Commission's decision to the Board of Supervisors), by reference in their appeal to the Commission (see Exhibit G), which specifically cite Big Sur LUP Policies 3.2.4.1 and 3.2.4.2 for development outside of the Critical Viewshed, and Development Standards 20.145.030.C.2.a, 20.145.030.C.2.b; and 20.145.030.B.6.e. The appellants also refer to contentions raised by the Coastal Commission in its earlier appeal of the Planning Commission's approval of the project. As described in Section 1 above, the Coastal Commission's appeal was deemed null and void since it was not based on the County's final local action on the project. Nonetheless, the appellant has also raised these issues by reference to these earlier contentions, which, with regards to scenic resource



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 10

protection policies, are generally as follows:

The project, located between Highway One and the sea, will be visible from the Highway and has not been sited and designed to avoid and reduce impacts to the public viewshed as required by the LCP. Specifically, the new structure has not been sited on the portion of the parcel that is least visible from public viewpoints, in conflict with Policy 3.2.4.2 of the Big Sur Land Use Plan (LUP) and Section 20.145.030C.2.b of the Coastal Implementation Plan (CIP). Moreover, the construction of a garage and guesthouse within the public viewshed, on a site that supports an existing residence, is an avoidable impact that is inconsistent with Policy 3.2.4.1 of the Big Sur LUP as well as Section 23.145.030C.2.a. of the CIP, which prohibit structures that detract from the natural beauty of the undeveloped shoreline. Finally, it is not clear that all areas outside of the development will be placed within a scenic conservation easement, as required by CIP Section 20.145.030.B.6.e.

Applicable Policies

Monterey County is very involved in protecting visual resources along the Big Sur Coast, and especially protective of preserving the scenic resources within the Big Sur Critical Viewshed. The Big Sur Coast Planning Area Land Use Plan (LUP) Policy 3.2.2 defines the Critical Viewshed as everything within sight of Highway 1 and major public viewing areas including turnouts, beaches and specific locations including, among others, Soberanes Point and Garrapata Beach, and the key scenic resource protection policy, LUP Policy 3.2.1, prohibits all future development visible within the Critical Viewshed. Exceptions to the key policy are provided for in certain specific cases, including vacant parcels in the Rocky Point Exception Area (LUP Policy 3.2.5.F). While the exception area policy refers specifically to vacant parcels, it has been interpreted by the County and the Court in the past to also apply to developed parcels in the Rocky Point exception area, provided that the portion of the parcel selected is the least visible from public viewpoints.

With regards to the Rocky Point Exception Area, LUP Policy 3.2.5.F states the following:

3.2.5.F. Rocky Point Area Vacant Parcels

Existing vacant residential parcels in the critical viewshed between Highway 1 and the sea, from (and including) the southernmost existing residential parcel on Rocky Point, to the northernmost developed residential parcel on Kasler Point and from the southernmost developed parcel north of Abalone Cove to the northernmost developed parcel south of Garrapata Creek shall be permitted to be used for residential purposes subject to policies of Section 3.2.4 of this plan [titled: Land Not in the Critical Viewshed] and the following standards.

Additional standards shall include keeping driveways as narrow as possible, avoiding paving where practical and consolidation of driveways; the use of roof and surface treatments, colors and materials which will visibly blend with the surrounding environment; the use of berming and other measures designed to minimize views of structures without blocking ocean vistas seen from



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 11

Highway 1; prohibiting the dumping of excavated materials over the coastal bluff, and additions, antennae, night flood lighting, or other improvements in view of Highway 1 without separate permit consideration; and dedication of scenic easement over undeveloped portion of lot. Guesthouses shall be attached to the main dwelling except where they can be sited to better implement these policies.

The specific policies identified by the appellant include the following:

For land **not** in the Critical Viewshed:

3.2.4.A.1. So that the visual continuity may remain undisturbed, the design and siting of structures, whether residential, commercial, agricultural, or public, and access thereto, shall not detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline.

3.2.4.A.2. New applicants, when selecting a building site, must consider the visual effects upon public views as well as the views and privacy of neighbors. The portion of a parcel least visible from public viewpoints will be considered the appropriate site for the location of new structures. New structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides or silhouetted ridges. Sites shall not leave excavation scars or slope disturbance. Structures and access roads shall be designed to minimize alterations of the natural landform and to avoid, insofar as feasible, removal of healthy tree cover.

Regulations for development not within the critical viewshed referred to by the appellant include:

20.145.030.C.2.a. All structures, whether, residential, commercial, agricultural, or public, and access thereto, shall be designed and sited so as not to detract from the natural beauty of the undeveloped skylines, ridgelines, and the shoreline. (Ref. Policy 3.2.4.A.1)

20.145.030.C.2.b. Buildings shall be located so as to minimize their visual impact upon public views as well as the views and privacy of neighbors. New structures shall be located on that portion of a parcel least visible from public viewpoints.

New structures shall be located where existing topography or trees provide natural screening and shall not be sited on open hillsides silhouetted ridges. Sites shall not leave excavation scars or slope disturbance. Structures and access roads shall be designed to minimize alterations of the natural landform and to avoid, insofar as feasible, removal of healthy tree cover. (Ref. Policy 3.2.4-A-2, 3.7.3.A.1 and 5.4.3.L.4)

20.145.030.B.6.e. New structures shall be sited so as to avoid the construction of visible access roads and minimize the extent of environmental and problems engineering resulting from road construction. (Ref. Policy 3.2.4.A.5)



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 12

Other relevant policies applicable to the contentions raised by the appellant, for land not in the Critical Viewshed include:

3.2.4.A.3. New development should be subordinate and blend with its environment, using materials or colors that will achieve that effect. Where necessary, appropriate modifications will be required for siting, structural design, size, shape, color, textures, building materials, access, and screening.

3.2.4.A.4. Landscape screening may be used wherever a moderate extension of native forested and chaparral areas is possible. Other screening must be of similar plant or tree species.

3.2.4.A.5. Sites for new structures shall be selected to avoid the construction of visible access roads and minimize the extent of environmental and engineering problems resulting from road construction.

3.2.4.A.6. New roads providing residential, recreational, or agricultural access will be considered only where it has been demonstrated that the use of existing roads is not feasible, or that permission for the use of an existing road is shown in writing to be unobtainable from neighboring property owners.

3.2.4.A.7. New roads shall avoid steep slopes and shall be located along the margins of forested areas, along natural land contours, or within existing vegetation. Road shall be aligned to minimize removal of native trees, and constructed to minimum standards consistent with the requirements of fire safety and emergency use. Drainage and erosion control measures must be adequate to prevent erosion. During road construction, side-casting of earth materials shall not be permitted; all materials not used for on-site fill shall be removed from the area.

Conformance with Applicable Scenic Resource Protection Policies

The proposed project will be visible from Highway One to the north and east of the property and from Garrapata Beach bluffs north of the property, and so is within the Big Sur Critical Viewshed. However, as indicated previously, the site is also located within the Rocky Point Exception area, where special policy allows for some development, subject to the policies of Big Sur LUP Section 3.2.4, and additional standards identified in Policy 3.2.5.F detailed above. These policies allow the project to be evaluated similar to those structures not located in the critical viewshed, but require that developments not detract from the natural beauty of the area, be located in the least visible portion of the parcel, use existing topography or trees to provide natural screening, be subordinate to the natural setting and blend in with the environment, and allow for the use of a moderate extension of vegetation screening. Sites are also required to avoid the construction of visible access roads, and new roads are required to be constructed to minimum standards consistent with fire safety and emergency use, and provide adequate drainage and erosion control measures.

Staff have reviewed the County record, including staff reports for the Planning Commission, and Board



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 13

of Supervisors hearings on the project, and have conducted several site visits to view the property and proposed development (most recently on April 1, 2003). Based on our site visit and evaluation of views from various points along Highway One and Garrapata Beach bluffs, we concur with the applicant and County planning staff that the proposed development approved by the Board of Supervisors is located in the least visible portion of the parcel. An existing 1,105 square foot residence (originally approved in the early days of the Coastal Commission under CDP P-73-393) is located out near the western end of the property on the flat coastal terrace in full public view. To require the guesthouse and garage to be attached to the main dwelling in this location would substantially increase the view of development, and require substantial screening that would look out of place this close to the blufftop. Instead, the project has been sited further landward to take advantage of existing topography, which helps to screen the development from the distance as well as areas closer to the site, and vegetative screening offered by a line of vegetation (cypress trees) located on the adjacent property to the north and the line of planted cypress trees located along the southern property boundary (see Exhibit D). While additional tree screening will be needed to screen the project from distant views from the north, the small amount of landscaping required can be considered a moderate extension of the existing forested areas on and adjacent to the site, and will blend in with existing cypress trees to the north (owned by the applicant) and south of the proposed structures, on and adjacent to the site. The Board's final local action has also been conditioned to require that the applicant's record a deed restriction prohibiting removal of the existing trees on the subject and adjacent parcels to the north (243-231-013, 243-231-015 and 243-231-016) that provide screening of the approved structure from major public viewing areas along Highway One, thus ensuring that the project will continue to be screened for the life of these trees, which, in this coastal bluff setting without artificial irrigation, can be expected to be a number of decades (even as much as 100 years or more).

The project design was also modified prior to being heard by the Board of Supervisors to lower the elevation of the structures by about 3 to 4 feet, which also greatly reduces the potential for the project to block ocean views from Highway One east of the site. This was accomplished by both lowering the base elevation of the structure 1.5 feet (digging it deeper into the ground) and by lowering the ridgeline elevation of the guesthouse, such that the proposed structures do not extend above any existing landforms, and so will not block any ocean views. Use of berming along the eastern side of the garage, and around portions of the north, south and western sides of the garage/guesthouse as proposed, also helps to minimize views of the structure without blocking ocean views from the east, along Highway One at Garrapata Bridge and south of the bridge. Additionally, with use of landscape planting atop the berm and installation of a turf roof (to include native plants appropriate to the site) atop the garage and guesthouse, vegetative screening along the northern side, and appropriate exterior materials (stone fascia, redwood doors and window casings, and non-reflective glass), the project has been designed to be subordinate and blend in with the environment. The gradual slope of the proposed berming, and the turf roof will serve to hide the structure from views from the east, and, based on the appearance of the turf roof on the existing house, and the restoration planting success of the site currently, is expected to be quite successful in creating the appearance of the natural, surrounding coastal terrace. The project has also been conditioned so that new landscape screening will be maintained so that it does not block views of the ocean. The mitigation monitoring program, incorporated by Condition 3 of the Board of



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 14

Supervisors decision, includes limiting the height of newly planted trees and shrubs “...so as not to block views any more than the proposed structure.”

Additionally, in consideration of views from the neighboring property to the south, the project has been conditioned (Condition 18.d) so that the new proposed wood fence, to be located along the southern property boundary, not exceed the height of the existing split rail fence, consistent with Big Sur LUP Policy 3.2.4.2. As currently sited, the proposed development is located north and landward of nearly all windows on the neighboring residence, and as such should not block any ocean views. A row of existing cypress trees is also located along the south property boundary shared by the two parcels, and based on a visit to the site appears to block nearly all views between the two properties.

The appellants have suggested relocating the proposed garage/guesthouse approximately 80 feet to the east. However, such relocation would move the structure into an area where physical gaps between existing trees on site would actually make more of the structure visible from Highway One.

The original project heard by the Planning Commission also included relocating an existing access road, which currently crosses three parcels all owned by the current property owners, entirely onto the subject parcel, however, the applicants removed that aspect from the project before being heard by the Board of Supervisors in order to minimize impacts that might be caused by such a relocation. Instead, the applicants retained most of the existing alignment, adding only a 140-foot long, 15-foot wide extension of the access road southward to reach the new garage (which again would be screened to the north by new and existing landscaping). The County’s approval also required turnouts approximately every 400 feet on the existing road to meet fire standards. The turnouts would also be screened by existing vegetation on site.

Big Sur Policy 3.2.5.F and CIP Section 20.145.030.D.6.e requires parcels in Rocky Point Exception Area to dedicate scenic easements over the undeveloped portions of the lot. In response to this requirement, the Board of Supervisors conditioned the project (Condition 6a) to require a scenic easement over the rocky point west of the existing residence from the bluff edge to the ocean. The County’s rationale for requiring a scenic easement only over this portion of the parcel is described in Finding 9, based on responses to the appellant’s contentions regarding appeal of the Planning Commission’s earlier approval of the project. The County’s rationale states that:

... the purpose of the Coastal Act is to protect views of landforms and the coastline. The rocky point below the existing house is a significant landform that provides justification to require a scenic easement over this area (Condition 6a)...

...there are no qualifying factors to use to determine a clear nexus for what areas are, or are not, required to be protected. The project includes a condition that limit[s] landscaping in a manner that does not restrict views beyond that of the proposed structures. In addition, the proposed guesthouse and garage have been designed and sited to minimize their intrusion in the critical viewshed. Although there is justification to require a scenic easement of the rocky point



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 15

below the existing hose, there is not justification to require any easement over the balance of the site.

Big Sur LUP Policy 3.2.5.F and CIP Section 20.145.030.D.6.e indicate that scenic easements should be placed over the undeveloped portion of the parcels. While the County has not applied the scenic easement requirement as written in the LCP, the project has been designed and conditioned to protect views to and along the ocean in this very scenic coastal area, to minimize the alteration of natural landforms, and to be visually compatible with the character of surrounding areas. Additionally, with the biological restoration work conducted by the applicants (see Section 4 below), the visual quality of the area has also been enhanced by the removal of invasive iceplant that covered half the site, and restoration of native vegetation appropriate to this coastal terrace site.

Furthermore, the portion of the parcel to be covered by the scenic easement, located seaward of the existing house does serve to protect a portion of the parcel that is a significant landform within the critical viewshed closest to the shoreline, worthy of protection by scenic easement. The remainder of the lot is very constrained by its shape, width, and exposure within the viewshed, so will be adequately protected by the strict application of existing viewshed policies. Therefore, while not the preferred approach for ensuring that additional development will not occur within the viewshed, the project does not raise a substantial issue with regards to the provision of scenic easement.

Conclusion

Based on our review and evaluation of the County's record, the project, as designed and conditioned by the Monterey County Board of Supervisors, has been:

- 1) Designed in a way that does not detract from the natural beauty of the undeveloped skylines, ridgelines and shoreline of the area, consistent with Big Sur LUP Policy 3.2.4.A.1 and CIP Section 20.145.030.C.2.a;
- 2) Sited in the least visible portion of the site, consistent with Big Sur LUP policy 3.2.4.A.2 and CIP Section 20.145.030.C.2.b;
- 3) Located in an area where existing topography and trees provide natural screening, in order to minimize landform alteration and removal of healthy tree cover, consistent with CIP Section 20.145.030.C.2.b;
- 4) Designed to not be attached to the existing dwelling in order to better implement scenic resource protection policies, consistent with LUP Policy 3.2.5.F; and
- 5) Designed using appropriate materials (redwood doors and window casings, wood and stone fascia, and non-reflective glass), and landscaping/berming to make it subordinate and blend with its environment, consistent with Big Sur LUP policies 3.2.4.A.3, 3.2.4.A.4, and 3.2.5.F.



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 16

The Board of Supervisors also incorporated mitigation measures to ensure that the project does not block ocean views seen from Highway 1, consistent with LUP Policy 3.2.5.F, and the project was redesigned to avoid construction of visible access roads and conditioned to develop drainage and erosion control plans to minimize the extent of environmental and engineering problems that might arise from road construction, consistent with CIP Section 20.145.030.B.6.e.

As such, the appeal of the Board of Supervisor's approval of the project does not raise a substantial issue with regards to scenic resource protection policies since the County has approved and conditioned the project consistent with the policies and regulations of the certified LCP. Additionally, while the LCP scenic easement requirement was not strictly applied consistent with the LCP policies, the appeal does not raise a substantial issue in this case, since the project has been designed and conditioned by the County to adequately protect scenic coastal resources.

4. Environmentally Sensitive Habitat Issues

Smith's Blue Butterfly is a federally endangered butterfly species, that historically ranged along the coast from Monterey Bay south through Big Sur to near Point Gorda, occurring in scattered populations in association with coastal dune, coastal scrub, chaparral, and grassland habitats. They spend their entire lives in association with two buckwheat plants in the genus *Eriogonum*. Emerging in late summer and early autumn, the adults mate and lay eggs on the flowers of these host plants. The eggs hatch shortly thereafter and the larvae begin to feed on the flowers of the plant. Following several weeks of feeding and development, the larvae molt to a pupal stage, beginning a ten- month period of transformation. The following year, as the *Eriogonum* again flower, the new adults emerge.

Biological surveys conducted on the subject parcel in 1997 identified the presence of numerous dune buckwheat (*Eriogonum parvifolium*) plants within the area of the proposed development. A second survey in July 2000 found dune buckwheat on the parcel, but did not identify the presence of the endangered Smith's blue butterfly, nor identify where the buckwheat was located relative to the proposed project. While the dune buckwheat itself is not a listed species, it is one of only two *Eriogonum* species that serves as a host plant for the endangered Smith's blue butterfly, and so is considered an environmentally sensitive habitat. As described below, more recent correspondence from the biological consultant (dated April 3, 2003 and April 10, 2004) indicates that by 2000, all existing buckwheat plants in and around the project area were eradicated due to the invasion and growth of a dense mat of iceplant on the subject site, and as a result, no dune buckwheat plants are currently located in or outside of the footprint of the proposed project area.

The Appellants contend that the project does not conform to the standards set forth in the certified Monterey County LPC in terms of ESHA policies, asserting that the project will remove buckwheat plants, intensification of use on the site will disrupt habitat and the project has not been conditioned to permanently protect buckwheat or other ESHA on site. The appellants incorporate their earlier letters (dated October 16, 2003 and November 24, 2003 regarding their appeal of the Planning Commission's decision to the Board of Supervisors), by reference in their appeal to the Coastal Commission (see



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 17

Exhibit G), which specifically cite Big Sur LUP Policies 3.3.1, 3.3.2.1, 3.3.2.3 and CIP Regulations for Development Sections 20.145.040, 20.145.040.B.1, and 20.145.040.B.2. The appellants also refer to contentions raised by the Coastal Commission in its earlier appeal of the Planning Commission's approval of the project. As described in Section 1 above, the Coastal Commission's appeal was deemed null and void since it was not based on the County's final local action on the project. Nonetheless, the appellant has also raised these issues by reference to these earlier contentions, which, with regards to ESHA protection policies, are generally as follows:

... The [Planning Commission's] approval does not ... adequately establish the project's consistency with LCP Policies protecting Environmentally Sensitive Habitat Areas. Replacing [Smith's blue butterfly] habitat in a new location, rather than protecting and enhancing habitat where it naturally occurs, contradicts Key Policy 3.3.1 of the Big Sur LUP and CIP Section 20.145.040, requiring that all practical efforts be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The permanent loss of this habitat area, and the intensified use of the site that would result from the development, will disrupt the habitat values of the site, in conflict with LUP Policy 3.3.2.1 and CIP Section 20.145.040B.1. In addition, the project has not been conditioned to permanently conserve other areas of the site containing dune buckwheat or other sensitive habitats, as required by Big Sur Land Use Policy 3.3.2.3 and CIP Section 20.145.040B.2.

Applicable ESHA Policies

The specific policies identified by the appellant include the following:

3.3.1 Key Policy. All practical efforts shall be made to maintain, restore, and if possible, enhance Big Sur's environmentally sensitive habitats. The development of all categories of land use, both public and private, should be subordinate to the protection of these critical areas.

3.3.2.1. Development, including vegetation removal, excavation, grading, filling, and the construction of roads and structures, shall not be permitted in the environmentally sensitive habitat areas if it results in any potential disruption of habitat value. To approve development within any of these habitats the County must find that disruption of a habitat caused by the development is not significant.

3.3.2.3. The County shall require deed restrictions or dedications of permanent conservation easements in environmentally sensitive habitats when new development is proposed on parcels containing such habitats. Where development has already occurred in areas supporting sensitive habitat, property owners should be encouraged to voluntarily establish conservation easements or deed restrictions.

CIP Section 20.145.040 includes Environmentally Sensitive Habitat Development Standards, designed to allow of the preservation of Big Sur's environmentally sensitive habitats, which basically states that all practical efforts shall be made to maintain, restore and if possible enhance Big Sur's environmentally



Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 18

sensitive habitats, and that development should be subordinate to the protection of these critical areas. Section 20.145.040 includes Biological Survey Requirements, and General Development Standards, and Specific Development Standards for terrestrial and marine habitats.

CIP Sections 20.145.040.B.1 and 20.145.040.B.2 reference and basically reiterate the requirements of Big Sur LUP Policies 3.3.2.1 and 3.3.2.3, except that 20.145.040.B.2 notes that easements and deed restrictions shall be required for new development on parcels containing environmentally sensitive habitat areas, as well as on parcels where the proposed project to occur is on an already developed parcel.

Conformance with Applicable Policies

A previous biological report, prepared in 1997 by the biological consultants, Jud Vandevere and Jeff Norman, for a project proposed by the previous property owner, identified that the subject parcel and an adjacent parcel to the north (APN 243-231-013 and -016) contained numerous dune buckwheat (*Eriogonum parvifolium*) plants, which, as described above, is a known host plant for the endangered Smith's blue butterfly, and so considered environmentally sensitive habitat. Based on a comparison of the maps included in the 1997 report (Exhibit I), with the location for the proposed guesthouse/garage, 111 plants were identified as having been located at that time in the vicinity of the currently proposed garage/guesthouse. Correspondence dated September 24, 2002, from Jud Vandevere to the Kleissners, who purchased the property in February of 2000, indicated that another survey of dune buckwheat on the property was conducted on July 26, 2000 (during what is considered to be the blue butterfly adult emergence period of mid-June to early September), however no Smith's blue butterflies were found. While the July 2000 survey found dune buckwheat on the parcel, it did not identify where the buckwheat was located relative to the proposed project. However, the same September 24, 2002 letter from Jud Vandevere did indicate that since the July 2000 survey, iceplant had been removed from the site, and dune buckwheat had been replanted by the current property owners.

While no mapping was included with the September 24, 2002 letter, more recent discussion with Mr. Vandevere indicated that following invasion of the site by iceplant, which overwhelmed and eradicated what dune buckwheat had previously been on site, the Kleissners replanted dune buckwheat on the subject parcel north of the existing access road and on the adjacent property to the north, which is also owned by the Kleissners (pers. comm. 4/8/04). The September 24, 2002 letter also stated that a survey of the proposed project area was conducted on September 17, 2002, and no buckwheat plants, or other rare or endangered plant or animal species were found on the subject parcel in or outside of the footprint for the proposed development.

Later correspondence from Jud Vandevere to the County planning staff, dated April 5, 2003, sent to clarify the chronology of biological conditions on the site, indicated that the original buckwheat and other native plants on the site, first identified in the 1997 survey, had been completely replaced by exotic, invasives (*Carpobrotus edulis*, otherwise known as Hottentot fig, or more commonly as



Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 19

iceplant), which had overgrown and “overwhelmed” the native plants. The current property owners later removed much of the iceplant on the parcel (sometime after the July 2000 survey), and then restored the area with a mix of coastal-adapted native plants that included, among other things, plantings of dune buckwheat, however none were located near the footprint of the planned development. The property owners conducted revegetation of the site in September 2000, according to landscape restoration guidelines prepared for the site by Thomas K. Moss (a qualified coastal biologist who has conducted numerous similar projects) who collected seeds from existing plants on site over a period of months. According to Mr. Vandevere, his efforts resulted in “a vast field of dune buckwheat, but not near the footprint of the proposed development.”

Most recently, Mr Vandevere submitted a letter to Commission staff, dated April 10, 2004, to again clarify the chronology of events on the property. Mr. Vandevere states that “by 2000, a mattress formation of Hottentot fig, *Carpobrotus edulis*, had completely overwhelmed and eradicated 100% of the dune buckwheat identified in 1997 within the vicinity of the proposed garage and studio [guesthouse].” Therefore there were no buckwheat plants in the area when the Kleissners conducted their restoration and revegetation of the area in 2000. Mr. Vandevere’s letter also reiterates that in the 2002 survey conducted on site, no buckwheat plants were identified in or outside of the proposed project area.

Based on this chronology, it has been confirmed that no dune buckwheat or other rare or endangered plants or animals exist in or around the area of proposed development. The biologist’s April 5, 2003 letter indicated that recommendations made in the original 1997 biological report are still applicable to the site. These include replanting any dune buckwheat lost during construction activities on a 1:1 basis; replacing iceplant removed from the site with more aesthetically pleasing and erosion preventing dune buckwheat plants; and replacing any Monterey Indian paintbrush, *Castilleja latifolia*, plants lost by construction activities on a 2:1 basis well away from future disturbance. The letter also recommended that prior to construction, topsoil [removed from the construction area] be stored and used on the sod roofs of both structures, since there may be a significant seed bank [of native plants, including dune buckwheat] in the stored soil. The biologist’s letter concluded that with implementation of these recommendations, no appreciable impact should occur as a result of the project.

Since the evidence shows that dune buckwheat plants were lost naturally, being overwhelmed by invasion of iceplant, the current property owners are not in violation of having removed sensitive habitat without a permit. The Monterey County Board of Supervisors final local action Finding 1(j) identified the chronology of biological information described above, noting that:

Based on reports from qualified biologists the integrity of the butterfly habitat (buckwheat) had been lost by the invasion of exotic iceplant. As such, abating the iceplant did not remove sensitive habitat; therefore no Coastal Development Permit was required. Removal of buckwheat plants is an allowed practice with proper replacement. Biologists have verified that the butterfly habitat in this area has been restored and no further mitigation is required.

The finding goes on to state that the restored buckwheat plants are located on a neighboring parcel also



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 20

owned by the Kleissners, but that no development is currently planned on that site, so no conservation easement is required for that area at this time as part of the project at hand. As of the date of this writing, no location map has been provided showing the location of the iceplant removal/revegetation and buckwheat restoration. However, as stated above, the project biologist has noted that with the implementation of biological recommendations no appreciable impact should occur as a result of the project. Although no numbers of new dune-buckwheat plants have been identified in the restoration area, the applicants have already conducted native plant restoration and revegetation of the subject parcel. The Board's final action conditions the project to require a conservation easement "...permanently protecting an appropriate portion of the subject parcel (APN 243-231-013) equivalent to the net area of potential buckwheat (*Eriogonum parvifolium*) habitat impacted by the approved development, including but not limited to planting native species on the roof of the approved structure." This would serve to protect dune buckwheat plants that may regenerate from the seedbank supply in the topsoil, now that the iceplant on the site has been removed, which will now help to restore and protect habitat that may support the Smith's blue butterfly, as well as other native plants and animals. The Board's action also conditions the project so that construction scheduling avoids the butterfly's flight season, implement temporary construction barriers and dust control measures.

Conclusion

Based on the chronology of biological reports described above, the appellants' contention that the project will remove buckwheat plants is not supported by the evidence provided. While sensitive coastal plants, including dune buckwheat which serves as a host plant species for the endangered Smith's blue butterfly, have existed on site in the past (as recently as 1997), recent reports indicate that invasive, exotic iceplant overgrew the area so much so that no such dune buckwheat, and therefore no Smith's blue butterfly habitat currently exists in the project area.

The appellants contention that intensified use of the site will disrupt Smith's blue butterfly habitat is a conclusionary statement, not supported by any description of how such activities would disrupt the habitat. The current property owners of the property voluntarily conducted the removal of the invasive iceplant, and subsequently revegetated the area using a seed mix made up of seeds collected from native species already located on site. As the applicants have actively worked to revegetate the area, replanting dune buckwheat north of the existing access road and on their adjacent parcel, and have incorporated a sod roof into the design with additional buckwheat plantings, the development and intensified use of the site will not adversely affect butterfly habitat, but will actually add habitat. Such restoration activities are consistent with the Key ESHA protection policy 3.3.1, and will help with the long-term maintenance of the native plant habitat located on the subject parcel.

Thus the County's approval allowing development of the garage/guesthouse would not remove any existing sensitive habitat nor cause any significant disruption of habitat and so is consistent with Big Sur LUP policy 3.3.2.1. Condition 6c, requiring a conservation easement to permanently protect potential dune buckwheat plants on the site, including those that may grow on the sod roof of the new structures, is consistent with Big Sur LUP 3.3.2.3. The Board's final local action also includes a condition to



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 21

protect native trees located close to the construction site from inadvertent damage from construction activities. As such, Commission staff finds that contrary to the appellants' contentions, the proposed project as approved and conditioned by the Board of Supervisors, is consistent with Big Sur LUP Policies 3.3.1, 3.3.2.1, 3.3.2.3 and CIP Regulations for Development Sections 20.145.040, 20.145.040.B.1, and 20.145.040.B.2, and so raises no substantial issue with regards to protection of environmentally sensitive habitat areas.

5. Archaeological Resource Protection Issues

The Appellants contend that the project does not conform to the standards set for the in the certified Monterey County LPC regarding archaeological resource protection policies. The appellants incorporate their earlier letters (dated October 16, 2003 and November 24, 2003 regarding their appeal of the Planning Commission's decision to the Board of Supervisors), by reference in their appeal to the Commission (see Exhibit G), which specifically cite Big Sur LUP Policies 3.11.1 and 3.11.2 and CIP Regulations for Development Section 20.145.120. The appellants also refer to contentions raised by the Coastal Commission in its earlier appeal of the Planning Commission's approval of the project. As described in Section 1 above, the Coastal Commission's appeal was deemed null and void since it was not based on the County's final local action on the project. Nonetheless, the appellant has also raised these issues by reference to these earlier contentions, which, with regards to archaeological resource protection policies, are generally as follows:

Archaeological surveys of the site indicate the presence of a cultural deposit within the project site. The results of laboratory testing, and a final technical analysis, have not yet been provided. Without these relevant details, the project cannot be found to be consistent with Big Sur LUP Sections 3.11.1 and 3.11.2, and CIP section 20.145.120, requiring new development to incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological resources.

Applicable Policies

The specific policies identified by the appellant include the following:

3.11.1. Key Policy. Big Sur's archaeological resources, including those areas considered to be archaeologically sensitive but not yet surveyed and mapped, shall be maintained and protected for their scientific and cultural heritage values. New land uses and development, both public and private, should be considered compatible with this objective only where they incorporate all site planning and design features necessary to avoid or mitigate impacts to archaeological resources.

3.11.2 General Policies.

1. All available measures, including purchase of archaeological easements, dedication to the County, tax relief, purchase of development rights, etc., shall be explored to avoid development



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 22

on significant historic, paleontological, archaeological, and other classes of cultural sites.

2. When developments are proposed for parcels where paleontological resources or archaeological or other cultural sites are located, project design shall be required which avoids or substantially minimizes impacts to such cultural sites. To this end, emphasis should be placed on preserving the entire site rather than on excavation of the resource, particularly where the site has potential religious significance.

3. Because of the Coastal Zone's known abundance of paleontological resources and archaeological and other cultural sites, no sites or development shall be categorically exempt from environmental review in the Big Sur Local Coastal Plan.

4. Whenever development is to occur in areas having a probability of containing archaeological sites, the Site Survey Office or a professional archaeologist shall be contacted to determine whether the property has received an archaeological survey. If not, such a survey shall be conducted to determine if an archaeological site exists.

5. When sufficient planning flexibility does not permit avoiding construction on paleontological, archaeological or other types of cultural sites, adequate preservation measures shall be required. Mitigation shall be designed to accord with guidelines of the State Office of Historic Preservation and the State of California Native American Heritage Commission.

6. Off-road vehicle use, unauthorized collecting of artifacts, and other activities other than development which could destroy or damage paleontological, archaeological or cultural sites shall be prohibited.

CIP Section 20.145.120 provides the development standards to assure the maintenance and protection of Big Sur's archaeological resources, and provides that development within 750 feet of a known archaeological resource, as identified through an archeological survey report, or as shown on County resource maps or other available information shall be required to obtain a Coastal Development Permit. CIP Section 20.145.120 also includes standards for requiring an archaeological survey report, guidelines for preparation of the report, requirements for environmental assessment of sites containing archaeological resources and development standards for parcels containing archaeological resources. Relevant development standards in 20.145.120.D are included here:

20.145.120.D.1. Development proposed on parcels with an identified archaeological site shall be designed and located so as to avoid development on or impacts to the site. Alternative siting or location, reduction of project size, and other techniques shall be utilized where resulting in reduced impact to or avoidance of the archaeological site (Ref Policy 3.11.2.2)

20.145.120.D.2. Development on parcels with an archaeological site, as identified through an archaeological report prepared for the site, shall be subject to the following conditions of approval to be completed prior to the issuance of building or grading permits:

a. The recommended mitigation measures contained in the archaeological survey report



Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 23

prepared for the site shall be made condition of approval.

- b. The applicant shall request a rezoning of the parcel to add an “HR” (Historical or Archaeological Resources) zoning district to the existing zoning of the parcel. The rezoning shall not necessitate an amendment to the Land Use Plan or this ordinance.*
- c. The archaeological site shall be placed in an archaeological easement. The easement shall be required pursuant to Section 10.142.130. Prior to being accepted by the County the proposed easement shall be reviewed and verified as adequate to protect the resource by an archaeologist who has been selected from the county’s list of archaeological consultants or who is a member of the Society of Professional Archaeologists*

20.145.120.D.3. Where construction on or construction impacts of an identified archaeological or paleontological site cannot be avoided, as verified in the archaeological report prepared for the project, a mitigation plan shall be required for the project. Prior to the application being considered complete, the plan shall be required by, submitted to and approved by the county. The plan shall be prepared at the applicant’s expense by a qualified archaeologist...

20.145.120.D.4. Were a mitigation plan has been prepared for a proposed development, a condition of project approval shall be that

- a. The preservation measures be undertaken and completed prior to the issuance of building grading permits; or*
- b. Where appropriate, according to the recommendations contained in the mitigation plan, the preservation measures shall be undertaken concurrent with grading or other soil-disturbing activities and shall be undertaken in accordance with the mitigation plan, as a condition of the grading or building permit; and*
- c. The results of the preservation activities shall be compiled into a final report prepared by the archaeologist and submitted to the County prior to issuance of the building or grading permits....*

Conformance with Applicable Policies

According to archaeological reports included in the County record (by Archaeological Consulting, dated October 3, 1996, October 10, 2002 and June 5, 2003; Exhibit J), the project site and an adjacent parcel to the north (APNs 243-231-013 and 243-231-016) were evaluated for potential archaeological resources. The preliminary cultural resource reconnaissance study, conducted in September 1996, included a background records search and field reconnaissance survey of the project area. The October 3, 1996 report indicated that an archaeological site CA-MNT-98 was recorded as extending onto the project parcel. However, results of the field reconnaissance indicated that while some archaeological resources (dark grey soil and shell fragments) were found on the northern parcel, most of the project area did not contain surface evidence of potentially significant cultural resources. It was noted at the time, however, that cultural resources of the CA-MNT-98 site might extend onto the project area, but



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 24

that much of the subject parcel was covered in iceplant (obscuring the soil surface).

A later resurvey of the project site on October 4, 2002 (see letter dated October 10, 2002) indicated that during the 1996 survey, dense iceplant precluded visibility on most of parcel 243-231-013, but that it had since been removed making the extent of the archaeological deposit in the project area apparent. The October 4 survey found that the dark midden soil containing copious shell fragments is found in the footprint of the proposed house and garage and in much of the new driveway alignment, and concluded that based on the extent of the archaeological midden and placement of the project on the site, impacts to the archaeological resource could not be avoided.

The consultants thus recommended that: 1) preliminary archaeological testing be conducted to determine the nature, extent and significance of the cultural deposit; 2) data be acquired to make such a determination, including excavating a single 1x1 meter test unit, obtaining at least 2 to 4 radiocarbon dates, and any other professional analyses required; 3) a preliminary archaeological report and mitigation plan be prepared; and 4) a final technical report be completed which includes the results of all analyses subsequent to excavation of the site for project construction.

A letter report dated June 5, 2003 from the archaeological consultant indicates that they did excavate a single 1x1 meter test unit of a portion of the archaeological site CA-MNT-98 in the guesthouse project impact area, and found that the archaeological midden on the site that contained numerous shell fragments, dominated by mussel (*Mytilus*) and abalone (*Haliotis*) shell. The archaeological consultant, at that time, also recommended that the guesthouse project should go forward as planned with a condition that a qualified archaeological monitor be present during construction activities that involve soil disturbance, and that work be halted if human remains or intact cultural features are discovered.

The archaeological consultants later prepared a final technical report (*Report on Archaeological Investigations for portions of CA-MNT-98B*, dated October 23, 2003) describing the results obtained from earlier archaeological tests that had been conducted in the vicinity of the proposed project area (in 1987 and 1991), and laboratory results from samples taken in the test unit on site in 2003, and radiocarbon dates from two shell fragments collected in 2003. Results of the archaeological investigations indicate that the archaeological deposit currently recorded as CA-MNT-98 consists of two extremely different occupation areas, CA-MNT-98A the southernmost portion of the site, characterized by high percentage of abalone shell, and CA-MNT-98B, characterized primarily by mussel shell. The current project area is at the southern edge of CA-MNT-98B. The project area is located within the currently recognized ethnographic territory of the Costanoan (often called Ohlone) linguistic group, which used areas along the Monterey County coastline for hunting and gathering for subsistence. Based on radiocarbon dating and other studies, CA-MNT-98B was determined to be an example of a "late Period Coastal Shellfish Processing site" and is later described as:

"...a Late Period resource exploitation area which was probably used on a seasonal basis. Principal activities included shellfish gathering and processing, along with some hunting and fishing... While the cultural deposit appears to be substantially intact, there is little information present; the type of site, defined as a coastal shellfish processing site, was probably used



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 25

intermittently or seasonally and never served as a primary residential base.”

Discussion with Mary Doane, of Archaeological Consultants (pers. comm. 4/7/04), indicated that many of these sites exist along the Monterey Peninsula and the Big Sur coast, but as very few cultural artifacts were discovered (one chert flake scraper, a very small chert bladelet and a piece of granite with some red ochre staining), it was not identified as a significant archaeological site. Further discussion with Gary Brescinni (pers. comm. 4/8/04) indicated that the information available from the site was fairly limited, and that the midden deposit would be considered minimally significant since they had extracted all the archaeological information they could from it. The October 2003 report notes that the management report (identified by M. Doane as the June 5, 2003 letter report), containing project recommendations was previously submitted, and the final technical report made no further comment about additional recommendations or mitigation measures.

The Planning Commission's earlier decision on the Kleissner guesthouse/garage project apparently relied on the earliest archaeological report, finding that the archaeological site was of limited significance and so adequately mitigated by a condition requiring an archaeological monitor be present during excavation activities. The Board of Supervisors final action on the project, however, acknowledges the October 2002 site visit and October 10, 2002 letter report and archaeological findings that the garage/guesthouse site contains cultural resources and recommended mitigation measures that included that additional testing should be completed. While the appellants contend that the Board's approval of the project prior to completion of the additional testing was inconsistent with the LCP, the archaeological testing was in fact completed and preliminary results identified in Finding 1(k)(3) of the Board's approval. The final reporting of laboratory results were completed prior to the Board's November 25th hearing, and did not change the management recommendations and mitigation measures identified in the June 5, 2003 letter report, which were incorporated into the Board's decision: Condition 19 requires that work be halted immediately within 50 meters of any archaeological, cultural, historical or paleontological resources are uncovered and Finding 1(k) notes that archaeological mitigation measures require a qualified archaeological monitor be present during construction activities.

The Board of Supervisors final local action Condition 6b also requires an archaeological easement for all significant archaeological sites, as determined by the final technical report prepared for the project. The October 23, 2003 report, which is considered to serve as the final technical report for the project, did not identify the midden as a significant archaeological site, and did not identify any other archaeologically significant sites within the project area, or that would be affected by project activities. However, the archaeological consultant, Gary Brescinni, did indicate that more significant archaeological sites might exist in the more northeastern portion of the property (north of the existing access road) where visual evaluation of the area identified a much greater density of shell material on the soil surface (pers. comm. 4/8/04)¹. However, since the proposed project is not seen as impacting significant archaeological resource, recommendations have not been made to re-site or redesign the

¹ The Final Technical Report did not identify any significant archaeological resources on site. If additional evaluation determines that there are significant archaeological resources to be protected on the property, Condition 7 requires that the applicant request a rezoning of the parcel (to add an "HR" Historic or Archaeological Resources zoning classification), prepare and implement a mitigation plan and obtain amendments if the mitigation plan would require material changes of the project as approved.



Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 26

project to avoid the site, and all mitigation measures recommended by the consultant have been incorporated into the Board of Supervisors approval to protect any further cultural resources that may be found in the project area during project construction activities.

Furthermore, in response to the appellant's suggestion that the guesthouse/garage structure be relocated about 80 feet landward, the archaeological consultant evaluated the impact of such relocation and responded by letter dated September 10, 2003 (Exhibit J) that the proposed relocation would not alter the recommendations already incorporated into the Board's action, and went on to note that:

...either way, the proposed structure will be within the midden area. Based on our test excavation, we believe that an archaeological monitor [to be present during construction-related activities that involve soil disturbance] will be all that is required with either of the two proposals."

Conclusion

Commission staff finds that contrary to the appellants' contentions, the proposed project as approved and conditioned by the Board of Supervisors, is consistent with Big Sur LUP Policies 3.11.1 and 3.11.2 and CIP Regulations for Development Section 20.145.120, and so raises no substantial issue with regards to protection of archaeological resources.

6. Guesthouse Requirements

The Appellants contend that the project does not conform to the standards set for the in the certified Monterey County LPC regarding guesthouse construction and use. (The appellants do not further indicate why they make this contention; perhaps it is because guesthouse standards were not specifically included in the project description or the Planning Commission's earlier approval, which was appealed to the Board of Supervisors by the same appellants.) The appellants incorporate their earlier letters (dated October 16, 2003 and November 24, 2003 regarding their appeal of the Planning Commission's decision to the Board of Supervisors), by reference in their appeal to the Commission (see Exhibit G), which specifically cite CIP Regulations for Development Sections 20.145.140B.4.d.3 and 20.145.140.B.4.d.10. The appellants also refer to contentions raised by the Coastal Commission in its earlier appeal of the Planning Commission's approval of the project. As described in Section 1 above, the Coastal Commission's appeal was deemed null and void since it was based on the earlier Planning Commission's decision, which was not the County's final local action on the project, once it was appealed to the Board of Supervisors. The Commission did not appeal the Board of Supervisors' decision. Nonetheless, the appellant has also raised these issues by reference to these earlier contentions, which, with regards to archaeological resource protection policies, are generally as follows:

Section 20.145.140B.4.d.3 of the CIP limits the construction of guesthouses to sites that can sustain the additional development in a manner that is consistent with the standards of the Big Sur Land Use Plan and the CIP. The proposed guesthouse is inconsistent with this standard due to the adverse impacts to scenic resources and LCP inconsistencies discussed above.



California Coastal Commission

Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 27

The County's approval of the project also conflicts with Section 20.145.140B.4.d.10, which requires a deed restriction prohibiting the rental of the guesthouse and the installation of cooking facilities. No such condition has been placed on the project.

Applicable Policies

The specific CIP regulations identified by the appellant include the following:

20.145.140.B.4.d.3. Guesthouses shall be excluded from density requirements. However, review during the permit process, site characteristics shall be reviewed in order to determine that the site is both capable of sustaining the additional development and that the proposal is consistent with the policies of the Big Sur Coast Land Use Plan and the standards of this ordinance.

20.145.140.B.4.d.10. Prior to the issuance of permits for guesthouse construction or for use of an existing building as a guesthouse, the applicant shall record a deed restriction, pursuant to Section 20,142.130.B, stating the regulations applicable to the guesthouse, including that the guesthouse shall not be separately rented, let or leased from the main residence and may not have cooking or kitchen facilities, nor may it be subsequently divided from the main dwelling.

Other relevant CIP regulations regarding guesthouse use and construction include the following:

20.145.140.B.4.d.1. The guesthouse shall be a permanent attached or detached structure containing a living area without cooking or kitchen facilities, which is secondary and accessory to an existing main residence.

20.145.140.B.4.d.2. One guesthouse shall be allowed per parcel or per existing main residence.

20.145.140.B.4.d.4. Detached guesthouses shall be located in close proximity to the principal residence

20.145.140.B.4.d.5. Guesthouses shall be required to share the same utilities with the main residence except where prohibited by public health requirements.

20.145.140.B.4.d.6. The guesthouse shall contain no kitchen or cooking facilities, including microwave ovens and hot plates.

20.145.140.B.4.d.7. All facilities such as "wetbars" must be proportionate to the size and scope of the guesthouse. There may be a maximum of 6 feet of counter space, excluding counter space required for a bathroom and its attendant fixtures. There may be a maximum of 8 square feet of cabinet space, excluding clothes closets.

20.145.140.B.4.d.8. Guesthouses shall not exceed 425 square feet of interior area in size.

20.145.140.B.4.d.9. Guesthouses may not be separately rented, let or leased from the main residence.



Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage
Page 28

Conformance with Applicable Policies

The appellants first raised these issues following the Planning Commission decision, which did not incorporate regulations for use and construction of the guesthouse. The findings of the Board of Supervisors final local action (Finding 9.g.1), however, did acknowledge that CIP requirements for guesthouse use had not been included in the list of conditions previously presented to the Planning Commission. Finding 9.g.1 then goes on to say that CIP Section 20.64.020.C.8 requires all applications for guesthouses to record a deed restriction, and conditioned the Board's approval to require that the applicant record a deed restriction stating the regulations applicable to guesthouse construction and use (Condition 5), consistent with CIP regulations Section 20.64.020 "Regulations for Guesthouses."

Regulations included in CIP Section 20.64.020 are basically similar to Section 20.145.140.B.4 of the Big Sur Regulations for Development cited above, except Section 20.64.020 lacks a regulation similar to CIP Section 20.145.140.B.4.d.3, which requires that "...site characteristics shall be reviewed in order to determine that the site is both capable of sustaining the additional development and that the proposal is consistent with the policies of the Big Sur Coast Land Use Plan and the standards of this ordinance." Coastal Commission staff reviewed the project plans and site characteristics and have determined, based on findings detailed above (which include evaluation of the project with regards to scenic, biological, and archaeological resource protection policies) that the site is both capable of sustaining the additional development and that the proposal is consistent with the policies of the Big Sur coast LUP and CIP regulations for development.

The guesthouse shown in the plans approved by the Board of Supervisors Resolution 03-398 is 420 square feet in size and does not contain a kitchen and thus conforms to the CIP Regulations for development Sections 20.145.140.B.4.d.1 through B.4.d.9 described above.

Conclusion

Commission staff finds that contrary to the appellants' contentions, the proposed project as approved and conditioned by the Board of Supervisors, is consistent with CIP Regulations for Development Sections 20.145.140B.4.d.3 and 20.145.140.B.4.d.10, and so raises no substantial issue with regards to regulations for guesthouse construction and use.

7. Other Appeal Contentions

The appellants have made other contentions that have either been responded to in regards to specific resource issues analyzed above, or are not relevant to LCP requirements, and so do not raise a substantial issue with regards to the project. Our analysis above indicates that the Boards decision is consistent with the LCP policies. The Boards decision included findings that fully described the project and identify how the project met the requirements of the LCP. Commission staff believe the County's findings and decision are supported by evidence in the record, and that they did conduct a thorough CEQA review of the project. Therefore, these contentions do not raise a substantial issue with regards



Appeal A-3-MCO-02-121 Staff Report

Kleissner Guesthouse and Garage

Page 29

to LCP requirements.



California Coastal Commission